

Document No. NATIONAL CAPITAL PARK AND PLANNING COMMISSION

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- ☐ It contains information of CIA interest that must remain classified at TS S B
Authority: HR 70-2
- ☐ It contains nothing of CIA interest

Date _____ Reviewer _____

Colonel L. K. White
Central Intelligence Agency
2430 E Street, N.W.
Washington 25, D. C.

RECONSTITUTED AS

NATIONAL CAPITAL PLANNING COMMISSION

JULY 19, 1952

INTERIOR BUILDING,

WASHINGTON, D. C.

July 15, 1955

DOI Waiver Letter In ERU FILE

Dear Colonel White:

You have asked me, as General Counsel of the National Capital Planning Commission, for my opinion as to this Commission's statutory authority pertaining to certain phases of the George Washington Memorial Parkway on the Virginia side of the Potomac and, particularly, as to contentions made to the Senate Appropriations Committee today by Mr. Roger D. Fisher about the Commission's authority.

The Act of May 29, 1930, 46 Stat. 482, as amended, authorized the acquisition of land for the George Washington Memorial Parkway and authorized appropriations for the land and for the development of the Parkway with a highway as a part thereof on the Virginia side of the Potomac from Mt. Vernon to Great Falls, exclusive of Alexandria, and on the Maryland side from Fort Washington to Great Falls, exclusive of the District. That Act vested in the Planning Commission certain authority and duties pertaining to the Parkway.

Section 1(a) of the Act incorporated the Mt. Vernon Memorial Highway, authorized by the Act of May 23, 1928, as a part of the George Washington Memorial Parkway. That Highway, constructed with Federal funds, connected Mt. Vernon with the Arlington Memorial Bridge. Section 1(a) authorized the construction with Federal funds of a highway on the Virginia side to complete the Parkway to Great Falls, but prohibited the use of Federal funds, except as a part of the Federal-aid highway program, for the highway from Fort Washington to the Great Falls on the Maryland side. A connecting free bridge was authorized across the Potomac at or near Great Falls.

From the meaning of the word "parkway," with which Section 1(a) deals almost exclusively, it is clear that Congress intended to authorize the construction of a scenic highway. The 1914 edition of Webster's International Dictionary was the first edition of that dictionary which contained the word "parkway." The 1914 definition was only "A broad thoroughfare beautified with trees and turf." Each new edition of Webster's International published since 1914 contained the same definition without more. The Act of 1930 was enacted fifteen years after the word appeared for the first time in Webster's. It is a cardinal rule of law that when Congress uses a word without defining it, the word is intended to have the ordinary or usual dictionary meaning. In view of the fact that it has only one such meaning, I cannot see how any contention can

successfully be maintained that the George Washington Memorial Parkway or any part of it must be merely a large park.

Further, the legislative history of the Act of August 8, 1946, 60 Stat. 960, amending the original Act, clearly proves that Congress, in passing the original Act, intended to authorize a highway upstream on the Virginia side.

Speaking of the highway provided between Fort Washington and Great Falls on the Maryland side, the third proviso of Section 1(a) of the original Act reads as follows:

"Provided further, That no money shall be expended by the United States for the construction of said highway on the Maryland side of the Potomac, except as part of the Federal-aid highway program: ..."

The foregoing quoted language prohibited the expenditure of Federal funds for a highway on the Maryland side, except as a part of the Federal-aid highway program, but did not prohibit the expenditure of Federal funds for such a purpose on the Virginia side.

The fourth proviso of Section 1(a) of the original Act permitted the Federal Government to advance, on a reimbursable basis, funds for the Maryland or Virginia shares of the acquisition costs of the lands "and the construction of said roads in any such unit referred to in this" section. (Underscoring supplied.) As this language included the Virginia side, and the Mt. Vernon Memorial Highway already extended downstream from the Memorial Bridge to Mt. Vernon, it could only refer to the Virginia side of the Parkway from the Memorial Bridge upstream to Great Falls.

The 1946 amending Act struck out all of the third proviso of Section 1(a) of the original Act and struck out the words "and the construction of said roads" in the fourth proviso of that section. Language appearing in the Senate Committee report (S. Rept. No. 1766, 79th Cong., accompanying S. 2286) explains the third reason for striking out the third proviso and the six words from the fourth proviso of the original Act. The explanation reads as follows:

"Sections 1 and 2 of the bill, as reported by the committee, would amend sections 1(a) and 1 (b) of the George Washington Memorial Parkway Act of May 29, 1930 (46 Stat. 482) to eliminate from those sections so much of the language thereof as prohibits expenditure by the United States of any money for the construction of the George Washington Memorial Parkway on the Maryland side of the Potomac, except as part of the Federal-aid highway program. These prohibitions contained in existing law are applicable only to the construction of that part of the parkway on the Maryland side of the Potomac River and do not apply to that portion of the parkway on the Virginia side of the Potomac River. There appears to be no good reason for the discrimination. The committee is, therefore, of the opinion that it should be eliminated."

From the language of the report quoted above, it is obvious that Congress intended that the upper Virginia portion of the Parkway should have a road or highway because Congress had given permissive authority to spend Federal funds specifically for such a highway. Attached hereto and made a part hereof are photostatic copies of excerpts of the Congressional Record of July 29, 1946 and August 1, 1946, setting forth, respectively, the entire debate in the Senate and House which occurred on the bill. These make it doubly clear that Congress originally intended (and reaffirmed that intention in 1946) to provide for the construction of highways on the upstream portion of the Virginia side of the George Washington Memorial Parkway.

Mr. Fisher is mistaken in saying that the Act of 1930 "authorized the National Capital Planning Commission to take over all or most of the proposed site at Langley for park purposes." The only provision of that Act to which he could have referred reads as follows:

"The National Capital Park and Planning Commission is authorized to occupy such lands belonging to the United States as may be necessary for the development and protection of said parkway ..." (Underscoring supplied.)

The above quoted language does not refer in any way to the "site at Langley" nor does it permit the Commission "to take over" land along the Potomac entitled in the United States merely for park purposes. On the contrary, land so located and belonging to the United States, but under the control and jurisdiction of other Federal agencies, may be occupied by the Commission only when such land is "necessary for the development and protection of said parkway." The Commission has determined that a portion of the land involved is necessary for the authorized purpose. Of course, had the Commission determined that all of the land was necessary, the Commission would have acted properly and within its statutory authority in making such a determination. But the Commission's determination was not so inclusive and the statutory language certainly does not make it mandatory for the Commission to occupy all of any such tract of land.

If I may be of further service to you or your Agency, please call on me.

Sincerely yours,

/s/ William S. Cheatham

William S. Cheatham
General Counsel

Att.